

EX PARTE OR LATE FILED

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MCDERMOTT, WILL & EMERY

April 18, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Lobby Counter at TW-A325
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation; WT Docket No. 94-54, Interconnection and Resale Obligations Pertaining to CMRS

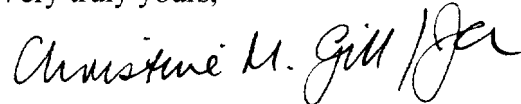
Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's rules, this is to notify you that Christine Gill of McDermott, Will & Emery (Counsel to Southern Communications Services, Inc., d/b/a Southern LINC ("Southern")), met today with Ari Fitzgerald (Legal Advisor to Chairman Kennard) to discuss the above-referenced docket.

A copy of an *Ex Parte* letter dated February 18, 2000, which presents Southern's position, is attached.

An original and one copy of this letter and attachment are being provided for inclusion in the record in this proceeding.

Very truly yours,



Christine M. Gill

Enclosure

cc: Ari Fitzgerald

No. of Copies rec'd 0+1
List ABCDE

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February 18, 2000

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**Re: Ex Parte Filing, CC Docket No. 94-54; Interconnection and Resale
Obligations Pertaining to CMRS**

Dear Ms. Salas:

Southern Communications Services Inc., d/b/a Southern LINC¹ ("Southern") submits this *Ex Parte* filing pursuant to Section 1.1206 of the Commission's rules in the ongoing proceeding in Docket No. 94-54 concerning roaming obligations of Commercial Mobile Radio Service ("CMRS") providers. The Commission has been considering the question of roaming requirements for CMRS carriers since 1996. Southern wishes to update the record on the status of roaming in the SMR market and to urge the Commission to adopt a requirement that SMR carriers using compatible technology offer automatic roaming services to each other's customers.

In the four years that have passed since the Commission began this inquiry, despite continued efforts, Southern has been unable to secure a roaming agreement with Nextel, the only other iDEN SMR carrier operating in the United States. Southern believes that there is now ample evidence that there is a need for regulatory intervention in the SMR segment of the

¹ Southern LINC operates a state-of-the-art digital wide area SMR system in the southeastern region of the United States. Southern has a service territory of more than 127,000 square miles and currently provides service to over 150,000 customers. Southern's system uses Motorola's iDEN technology which offers unique capabilities including dispatch, internet access and data transmission, as well as standard interconnected voice service. Southern LINC is considered a "covered SMR" for purposes of the roaming rules.

commercial wireless market in order to ensure that all wireless customers have equal access to roaming capability.

I. Background

In the 1996 *Second Report and Order* in this proceeding the Commission adopted rules requiring manual roaming for cellular, broadband personal communications services ("PCS") and covered Specialized Mobile Radio ("SMR") providers.² At the same time the Commission invited interested persons to provide updated comments on what policy the Commission should adopt in regard to automatic roaming for CMRS carriers. Subsequently in December of 1997, the Commission again sought further comment on automatic roaming requirements.³

In the *Second Report and Order* the Commission recognized that "the availability of roaming was critical to the development of a seamless, nationwide 'network of networks'" and that roaming is important to a truly competitive marketplace.⁴ Nevertheless, the Commission decided to take a "wait and see" approach to automatic roaming in the hope that market incentives would foster roaming agreements and regulation would be unnecessary.⁵ Under normal market conditions, the Commission reasoned, carriers should see advantages to providing roaming service to other carriers' customers since roaming can be a significant source of revenue.⁶

In this proceeding, Southern has consistently taken the position that market forces would *not* assure that all SMR customers have access to roaming and therefore the Commission should mandate that SMR carriers using *compatible* technology offer automatic roaming to each other's customers. Southern recognized the inherent technical difficulties of requiring roaming between dissimilar services, i.e. Cellular to PCS or PCS to SMR, but saw no technical obstacles to roaming between compatible carriers, i.e., SMR-to-SMR. Other comments submitted in this

² Second Report and Order and Third Notice of Proposed Rulemaking, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, 11 FCC Rcd. 9462 (Released August 15, 1996) (hereinafter "*Second Report and Order*").

³ Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and covered SMR Networks, Public Notice DA 97-2558 (released December 5, 1997).

⁴ *Second Report and Order* at ¶s 2, 8, 13. ("We are applying the manual roaming rule to these categories of CMRS licensees in order to ensure regulatory parity and to promote competition in the wireless market by enhancing all carriers' ability to compete.")

⁵ Id. at ¶ 4.

⁶ Id. at ¶ 11 ("The record ... demonstrates that roaming is widely available to cellular subscribers, is highly valued ... and is one of the industry's fastest growing sources of income ...; Roaming revenue in cellular industry was growing at 42 percent a year despite the fact that many carriers charge premium prices to roamers.")

proceeding were divided, with incumbent carriers generally opposing any requirement for automatic roaming while new entrants favored a policy that would ensure they would be able to secure roaming agreements from established carriers.⁷ Nextel opposed both the Commission's current requirement for manual roaming and any prospective policy that would require it to enter into any automatic roaming agreements.⁸

II. There is an Urgent Need for the Commission to Adopt an Automatic Roaming Requirement in the SMR Industry

Since the Commission's proceeding in this docket began, there has been even further consolidation in the SMR industry. There are only a handful of analog carriers remaining and only two digital carriers, Southern LINC and Nextel, offering wide area, state-of-the-art services. Because of this consolidation, and the resulting market dominance of Nextel, the usual incentives that would motivate carriers to enter into mutually beneficial roaming agreements do not exist in this market. As the Commission has recognized, roaming is a highly desirable service from a customer's standpoint, and customers expect to be able to roam beyond their home carrier's footprint. Not only is roaming a highly desirable feature, but as the U.S. population comes to rely more and more on wireless telephones, roaming capability is a necessity.

As Southern's customer base has grown dramatically, the widespread use of its service has led to more requests for the ability to roam. The attached letters from current Southern customers attest to the demand for this capability.⁹ Southern LINC serves an unusually large number of governmental entities, law enforcement agencies, emergency service entities and other public service agencies, which rely on its system for critical communications needs.¹⁰ While roaming offers a high degree of convenience to the average wireless user, in the case of public safety organizations, roaming can be critical to their life-saving missions.

The Commission has made an enormous effort to ensure that E-911 services are available to wireless customers. Full-scale implementation of wireless E-911 service is now underway. The Commission's stated goal is to ensure wireless customers are able to access life-saving

⁷ See, e.g., Comments submitted in response to Public Notice seeking additional Comment in Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks, DA 97-2558 (Released December 5, 1997) by AT&T Wireless, Omnipoint Communications, Maretel Communications, Telecommunications Resellers Association (Supporting an automatic roaming requirement); Nextel, et al. (opposing an automatic roaming requirement).

⁸ See, Nextel Petition for Reconsideration and Clarification in Docket 94-54 (filed September 26, 1996).

⁹ See, Letters from Harrison County School District and American Medical Response.

¹⁰ See, Memorandum Opinion and Order In the Matter of Southern Company Request for Waiver of Section 90.629 of the Commission's Rules, DA 98-2496 (released December 4, 1998) citing the unique use of Southern's network by public safety organizations.

emergency services using their wireless phone just as easily as customers using wireline phones. As a general rule, wireless carriers operating compatible systems have the obligation to "answer" the 911 calls of roaming units as well as their own customers. If SMR carrier-to-carrier automatic roaming agreements are in place, at least between carriers with technically compatible systems, roaming customers will have not only immediate and more reliable 911 access, but greater ability to use their wireless phones for *any* urgent matter, not only those that rise to the level of a 911-type emergency. Surely the Commission recognizes the public interest would be served by making roaming as widely available as possible. It should not let the narrow, competitive motivations of carriers stand in the way of the obvious public need for this type of service.

III. Inter-SMR Roaming is Technically Feasible

SMR-to-SMR roaming between technically compatible networks is achievable at economically reasonable costs and can be instituted on the iDEN digital platform which both Nextel and Southern LINC use without great technical difficulty. Since 1996, technical solutions have been devised to permit roaming between iDEN systems. In fact, Nextel has initiated a global effort to establish roaming with virtually every other iDEN carrier in the world (both affiliated and non-affiliated) with the exception of Southern LINC.¹¹

The Commission's rules currently require SMR carriers to provide manual roaming to each other.¹² However, while technically feasible, manual roaming does not give customers the convenience and ease of use which automatic roaming does. Accordingly, manual roaming is not an attractive option for wireless customers, particularly now that the public has become accustomed to the type of seamless automatic roaming which is prevalent in the cellular market. Because manual roaming is cumbersome from the customer's standpoint, it is not readily accepted in the marketplace. Furthermore, from an implementation standpoint, it makes no sense to make the technical changes necessary to implement manual roaming, when with the same effort carriers can move to automatic roaming capability.

Southern believes there are no major technical obstacles to achieving automatic roaming between iDEN systems. Since Nextel and Motorola are going forward with a technical solution for worldwide iDEN roaming, and Nextel has already implemented a roaming agreement with a

¹¹ Southern recently became aware that Nextel, together with its vendor Motorola, has formed a roaming consortium which meets with other iDEN carriers around the world to work out the details of implementing worldwide iDEN Roaming.

¹² Nextel filed a Petition for Reconsideration in this proceeding which argued that manual roaming between iDEN carriers was not technically possible. Southern filed an Opposition which disputed this claim. Southern has not been able to obtain a manual roaming agreement with Nextel either.

Canadian iDEN carrier,¹³ it is obvious that any technical adjustments needed to permit roaming between Southern LINC and Nextel can be worked out. Motorola has also assured Southern that this is the case.

IV. Why SMR Market Roaming Agreements Will Not Be Instituted Without Regulatory Action

Nextel is undertaking a wide-scale effort to enter into roaming agreements with virtually every other iDEN carrier in the world with the exception of Southern LINC. As mentioned, Nextel has established a consortium to enter into agreements and to solve the technical issues to make automatic roaming possible. It already has an automatic roaming agreement with Clearnet, a Canadian iDEN carrier. The vendor for iDEN equipment, Motorola, has developed a procedure for accomplishing automatic roaming, which Nextel intends to implement globally. Nextel even has plans to implement roaming with GSM carriers who operate on a different technical platform. Since Southern is the only direct competitor to Nextel in the trunked digital dispatch market, Southern believes its continued refusal to enter into an automatic roaming agreement is anti-competitive.

The Commission continues to recognize that the trunked digital dispatch SMR market is highly concentrated.¹⁴ This being the case, the normal market incentives do not exist (for example, it is not the case in this market that if Nextel declines to enter into a roaming agreement, another carrier would agree to do so to gain the roaming revenues). Southern's customers can only roam onto an iDEN carrier's system, making Nextel the only possible roaming partner within the U.S.

V. Regulatory Action is Needed to Ensure Roaming is Available to SMR Wireless Customers

Without the requirement that technically compatible SMR carriers enter into an automatic roaming agreement on a non-discriminatory basis, Southern believes that its customers will be unable to avail themselves of roaming services. There is an appropriate role for the FCC to play in ensuring that wireless customers are not denied the benefits of roaming due to carriers' anti-competitive motivations.

Where market distortions exist such as in the SMR market, a hands-off regulatory approach is not in the public interest. Southern believes the Commission should adopt rules that require SMR carriers with compatible networks to enter into automatic roaming agreements. In

¹³ See, Land Mobile Radio News, "Clearnet Offers U.S. Roaming with Less Hassle" July 25, 1997.

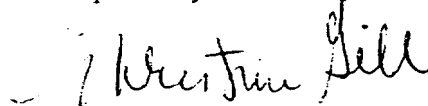
¹⁴ In the Matter of Applications of Geotek, *et al.*, Memorandum Opinion and Order, at ¶ 33, DA-00-89 (released January 14, 2000).

Ms. Magalie Roman Salas
February 18, 2000
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Southern's case, this would mean that SMR carriers using digital technology such as Motorola's iDEN must enter into SMR carrier-to-carrier roaming agreements upon request. This pro-active approach by the Commission would strongly signal to the market that carriers should get down to the business of negotiating these agreements or face regulatory sanctions. Southern believes this would set the proper framework for these negotiations to take place and would be the fastest way to achieve roaming capability for U.S. wireless users.

Southern does not believe that case-by-case adjudication of this issue under carrier complaint procedures is an efficient or effective regulatory mechanism. This process encourages carriers to delay as long as possible, denies customers access to roaming capability for a longer time, and is an expensive and time-consuming process. Having an automatic roaming requirement in place will motivate carriers to early compliance. At a minimum, the Commission should establish a strong policy of non-discrimination by CMRS carriers. Under this approach, carriers would be able to "opt into" any existing terms and conditions for roaming that a carrier has in place on a non-discriminatory basis. The Commission has already found that roaming is a common carrier service so this approach would be consistent with that finding.¹⁵ Southern urges the Commission to take action consistent with the foregoing in this proceeding.

Respectfully submitted,



Christine M. Gill
McDermott, Will & Emery
Attorneys for
Southern Communications Services, Inc.

Enclosures

cc: Chairman William E. Kennard, Attn: Ari Fitzgerald
Commissioner Susan Ness, Attn: Mark Schneider
Commissioner Harold W. Furchtgott-Roth, Attn: Bryan Tramont
Commissioner Michael K. Powell, Attn: Peter A. Tenhula
Commissioner Gloria Tristani, Attn: Adam Krinsky
Thomas Sugrue, Bureau Chief, Wireless Telecommunications Bureau
Jeffrey Steinberg, Deputy Chief, Commercial Wireless Division

¹⁵ Under this approach, covered SMR providers which enter into roaming agreements with other SMR providers would be required to make such agreements available to similarly situated providers, where technically compatible handsets are being used, under nondiscriminatory rates, terms and conditions.

Harrison County School District

HENRY A. ARLEDGE
Superintendent of Education

11072 Highway 49
Gulfport, Mississippi 39503
(228) 539-6500
(228) 539-6507

E. MITCHELL KING
Assistant Superintendent

November 2, 1999

NOV 8

Robert G. Dawson
Chief Executive Officer
Southern LINC
5555 Glenridge Connector, Suite 500
Atlanta, GA 30328

Dear Mr. Dawson:

The Harrison County School District is one of the oldest Southern LINC users on the Mississippi Gulf Coast. We appreciate the reliability of Southern LINC, but we are disappointed that Southern LINC has not been able to make arrangements to allow us to roam into the Jackson, Mississippi (the state capital) and the New Orleans, Louisiana areas.

The Harrison County School District needs radio and telephone service in the Jackson, Mississippi area, for many of our key personnel have to travel in the Jackson and New Orleans areas often. With the concerns that public education and the parents that we serve have for safety, it is of utmost importance that our supervisory staff has the ability to stay in contact with the district when traveling in the Jackson and New Orleans area.

As a school district we use the Southern LINC system for all of our radio and cellular service for the schools and the key personnel. It is a great disadvantage for us to lose contact with the district when we travel to the Jackson area.

The Superintendent of Education is the most frequent traveler to the Jackson area. Needless to say, he needs to be able to be reached at a moments notice. We are able to do that at any time other than when he travels to Jackson. It is also imperative that he can call back to the district.

We urge that Southern LINC establish roaming arrangements with Nextel Communications, which operates an iDEN system in the New Orleans area and hopefully the Jackson area as well. The Jackson, Mississippi area is our first choice for roaming services.

Sincerely,



Henry Arledge
Superintendent



AMERICAN MEDICAL RESPONSE

Robert G. Dawson
Chief Executive Officer
Southern LINC
5555 Glenridge Connector
Suite 500
Atlanta, GA 30342

Dear Bob,

American Medical Response ("AMR") is the nation's largest private provider of medical transportation. As you know, AMR - a loyal Southern LINC customer - provides this critical public safety service in Mississippi and Louisiana. Currently we can only communicate via Southern LINC to the Magee, Mississippi area. We have operating units in the St. Tammany, Orleans and Jefferson parishes in Louisiana. If we were able to communicate with our South Louisiana operating units, it would greatly enhance our efficiencies. Right now we must maintain three separate communications systems in order to provide total area-wide communications. We would greatly benefit by having roaming capability.

On behalf of AMR Gulf Coast, please consider this our formal request for roaming, and please present this request to Nextel Communications on our behalf.

Sincerely,

Steve Delahousey
Steve Delahousey
Director of Operations

002/002

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